

LIBRARY
SUPREME COURT, U. S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 608)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 178

**UEBERSEE FINANZ-KORPORATION, A. G.,
PETITIONER,**

vs.

**J. HOWARD McGRATH, ATTORNEY GENERAL AND
AS SUCCESSOR TO THE ALIEN PROPERTY CUS-
TODIAN**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 7, 1951.

CERTIORARI GRANTED OCTOBER 15, 1951.

No. 178

JOINT APPENDIX

Office Supreme Court, U. S.

FILED

JUL 7 1951

CHARLES ELMORE CROPLEY
CLERK

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,464

UEBERSEE FINANZ-KORPORATION, A. G.,

Appellant,

—against—

J. HOWARD McGRATH, Attorney General and as
successor to the Alien Property Custodian,

Appellee.

Appeal from the District Court of the United States for the
District of Columbia

United States Court of Appeals

For the

District of Columbia Circuit

Vol. I—Pages 1 to 608

FILED FEB 25 1950

Fryd. W. Stewart

CLERK

INDEX

	PAGE
Docket Entries	1a
1 Complaint	1
Amendment to Complaint	5
Answer to Complaint as Amended	7
Pretrial Proceedings and Defendant's Memorandum	10
Plaintiff's Interrogatories	15
Defendant's Answer to Plaintiff's Interrogatories	18
Defendant's Supplemental Answer to Interrogato- ries	22
Defendant's Interrogatories	24
Plaintiff's Answer to Interrogatories	29
Plaintiff's Motion for a New Trial	36
Affidavit of Eleonore Fernhammer	38
Opinion of District Court	41
Findings of Fact and Conclusions of Law	52
Judgment	64
Defendant's Memorandum Opposing Motion for New Trial	65

Plaintiff's Memorandum in Support of Motion for New Trial	85
Affidavit of Walter E. Gallagher	90
Affidavit of Richard J. Connor	91
Affidavit of Heinrich Kronstein	98
Defendant's Additional Memorandum in Opposition to Motion for a New Trial.....	105
Memorandum of District Court Denying New Trial.....	109
Order Denying New Trial.....	110
Notice of Appeal.....	111
Order of Substitution of Defendant.....	112

TESTIMONY

PLAINTIFF'S WITNESSES

Wilhelm von Opel (Deposition):

Direct	114
Cross	135

Wilhelmine Dern (Deposition):

Direct	167, 178
Cross	175

Edith Esklony (Deposition):

Direct	185
Cross	204

PLAINTIFF'S WITNESSES (Continued)

	PAGE
Marta von Opel (Deposition):	
Direct	205
Cross	208
Heinrich Kronstein:	
Direct	278, 382, 1100, 1597
Cross	340, 358, 1602
Fritz von Opel:	
Direct	387, 961, 1117, 1121, 1566
Cross	462, 588, 882, 986, 1120, 1585
Hans Frankenberg:	
Direct	798, 854, 864
Cross	805, 859, 864
Daniel Gros:	
Direct	994, 1045
Cross	1016
Otto Kaufmann:	
Direct	1062, 1095
Cross	1085
Andrew G. Clauson, Jr.:	
Direct	1409
Cross	1418

PLAINTIFF'S WITNESSES (Continued)

PAGE

Walter van Dyke Bayer:

Direct 1417, 1446

Cross 1432

Eugen Meier:

Direct 1448, 1507

Cross 1463, 1511

DEFENDANT'S WITNESSES

Rudolf Deku:

Direct 562, 587

Cross 572

Harry Kiefer:

Direct 866, 877

Cross 869

Calvin Houghland:

Direct 1103, 1114

Cross 1107

John Mason Houghland:

Direct 1121, 1214

Cross 1151, 1218

Butler Parnell Crittenden:

Direct 1221

Cross 1249

V DEFENDANT'S WITNESSES (Continued)

PAGE

Magdalena Schoch:

Direct 1264, 1403

Cross 1329, 1406

James D. Mooney (Deposition):

Direct 1534

Cross 1547

Margot von Opel (Deposition):

Direct 1605

Cross 1617

ADDITIONAL WITNESSES

Manfred Stansfield:

Deposition 209

Testimony 746

Carl Friedrich Wilhelm:

Deposition 1050

PLAINTIFF'S EXHIBITS

NO.		PAGE
3	Letter from Wilhelm von Opel dated April 11, 1929	1803
4	Power of attorney dated October 6, 1931	1804
5	Gift agreement dated October 5, 1931	1805
6	Letter from Fritz von Opel dated October 17, 1931	1807
7	Letter from Dr. Max Hackenburg dated October 3, 1931	1809
8	Draft of gift agreement dated October 3, 1931	1813
9	Memo of "Fundamental considerations" of Dr. Gros	1816
10	Letter from Dr. Max Hackenburg dated October 5, 1931	1817
24	History of gift	1820
25	1931 tax return of Wilhelm von Opel	1821
26	Tax assessment against Wilhelm von Opel dated August 2, 1932	1822
29	Tax return of Wilhelm von Opel dated October 27, 1933	1823
30	Tax return of Wilhelm von Opel for 1935	1824
30E	Explanation of tax return of 1935	1825

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
35	Report of Wilhelm von Opel proxy dated Sept. 28, 1940	1825
35A	Letter to Finance President, Berlin, dated Sept. 28, 1940	1828
36	Letter to Reichsbank dated April 16, 1937	1829
37	Report of Wilhelm von Opel on U. S. claim dated April 16, 1937	1830
38	German gift tax assessment against Wilhelm von Opel dated January 7, 1932	1831
39	Inheritance tax report of Wilhelm von Opel, dated January 15, 1932	1832
40	Tax assessment of German Government dated Feb. 13, 1933	1835
41	Notice of appeal against tax assessment dated February 21, 1933	1838
45	Letter to German revenue office dated January 2, 1932	1839
46	Transcript of bank account	1840
47	Letter to Fritz von Opel dated Sept. 22, 1933	1846
49	Stipulation dated November 24, 1948	1847
50	Cable from Fritz von Opel dated Sept. 17, 1931	1852
51	Cable from John Thomas Smith dated Sept. 21, 1931	1853

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
52	Cable from Wilhelm von Opel dated Oct. 5, 1931	1853
53	Cable from John Thomas Smith dated Oct. 5, 1931	1854
54	Cable from Fritz von Opel dated Oct. 13, 1931	1854
56	Letter from Fritz von Opel dated Oct. 19, 1931	1855
57	Letter from John Thomas Smith dated Oct. 19, 1931	1856
58	Letter from Fritz von Opel, as attorney in fact, dated Oct. 20, 1931	1857
59	Letter from Geo. J. Kenny dated Oct. 20, 1931	1857
60	Letter from Fritz von Opel, as attorney in fact, dated Oct. 20, 1931	1858
61	Letter from Fritz von Opel, as attorney in fact, dated Oct. 20, 1931	1859
62	Letter from J. P. Morgan & Co. dated Oct. 20, 1931	1860
64	Letter from John Thomas Smith dated Oct. 22, 1931	1860
65	Letter from Fritz von Opel dated Oct. 23, 1931	1861
66	Letter from Fritz von Opel, as attorney in fact, dated Oct. 28, 1931	1862

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
68	Transcript of bank account of Wilhelm von Opel	1863
69	Bank instructions dated Oct. 30, 1931	1864
70	Transcript of bank account	1865
71	Bank memorandum dated Nov. 17, 1931	1870
72	Letter from Fritz von Opel dated May 31, 1932	1871
73	Letter from Overseas Finance Corp. dated May 9, 1932	1871
74	Power of attorney to Fritz von Opel dated May 9, 1932	1872
75	Letter from Fritz von Opel, as attorney, dated May 31, 1932	1873
76	Stipulation, declaration of incorporation and articles of incorporation	1874
78	Letter from Union Bank of Switzerland dated June 25, 1936	1880
79	Statement of Adler & Company, Inc.	1882
80	Deposit statement of Adler & Company, Inc. dated Oct. 19, 1948	1883
83	Notification of departure	1884
90	Letter from Transdanubia Bauxite dated March 12, 1941	1885

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
91	Telegram to Transdanubia.....	1889
92	Telegram from Transdanubia Bauxite.....	1890
93	Memo of Fritz von Opel.....	1891
96	Letter from D. Gros dated July 27, 1935.....	1891
97	Letter from D. Gros dated Oct. 8, 1935.....	1899
98	Copy of letter from D. Gros dated Nov. 22, 1935.....	1901
99	Letter from D. Gros dated Feb. 8, 1936.....	1907
100	Letter from D. Gros dated March 11, 1936.....	1912
101	Letter from D. Gros dated July 7, 1937.....	1915
102	Copy of Swiss Supreme Court decision.....	1917
103	Liechtenstein citizenship certificate of Fritz von Opel dated Dec. 22, 1939.....	1924
104	Statement from Liechtenstein	1925
162	Current account of Transdanubia	1925
163	Letter from Mason Houghland dated Oct. 25, 1943	1927
168	Letter to Alien Property Custodian dated Nov. 5, 1944.....	1928
169	Letter to Alien Property Custodian dated Nov. 6, 1944.....	1933

PLAINTIFF'S EXHIBITS (Continued)

NO.		PAGE
170	Telegram from Alien Property Custodian dated Dec. 29, 1944.....	1945
171	Telegram from Alien Property Custodian dated Dec. 20, 1944.....	1946
177	Liechtenstein statutes.....	1949
178	Letter to Fritz von Opel dated Aug. 22, 1933.....	1958

DEFENDANT'S EXHIBITS

1	Letter to German Revenue Office dated Sept. 9, 1931.....	1961
2	Memo attached to report of Wilhelm von Opel dated Sept. 9, 1931.....	1962
3	Letter from Wilhelm von Opel dated Oct. 28, 1931.....	1963
4 ^c	Letter from Frey dated Dec. 24, 1931.....	1965
5	Letter from Adler & Co. dated Nov. 30, 1931.....	1966
6	Letter from Wilhelm von Opel dated Oct. 23, 1931.....	1967
7	Cable from John Thomas Smith dated Oct. 30, 1931.....	1968
8	Transcript of record of Gold case.....	1968
9	Letter from National City Bank dated Sept. 22, 1933.....	2104

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
10	Letter from German Foreign Exchange Control Office dated March 21, 1932.....	2105
11	Letter from German Office for Registration of Foreign Debts dated Nov. 30, 1931.....	2106
12	Letter from Wilhelm von Opel dated Dec. 11, 1931	2107
13	Letter from Wilhelm von Opel dated Jan. 5, 1932	2110
14	Letter from Wilhelm von Opel dated Jan. 13, 1932	2111
15	Letter to Wilhelm von Opel dated Jan. 25, 1932	2113
16	Letter from Reichbank Director Goller dated Feb. 5, 1932	2114
17	Swiss notice of attachment dated Feb. 10, 1932	2115
18	Letter to Wilhelm von Opel dated Feb. 25, 1932	2116
19	Swiss notice of attachment to dispose of attached property dated March 15, 1932.....	2117
20	Letter to Wilhelm von Opel dated March 24, 1932	2118
21	Letter from Wilhelm von Opel dated April 5, 1932	2119

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
22	Letter from Wilhelm von Opel dated April 14, 1932	2122
23	Letter from Office for Registration of Foreign Debts dated May 9, 1932	2125
24	"Considerations of * * * the gift" dated Sept. 19, 1939	2127
25	Letter from Fritz von Opel dated Dec. 21, 1936	2127
26	Letter from Wilhelm von Opel dated Sept. 21, 1933	2128
27	Telegram from Wilhelm von Opel dated May 17, 1934	2132
28	Acknowledgment of debt by Wronker-Flatow dated March 16, 1931	2132
29	Letter from M. Wronker-Flatow dated March 8, 1937	2133
30	Letter from John Thomas Smith dated June 2, 1932	2135
31	German Reich President Executive Order dated Aug. 1, 1931	2137
32	Will of Wilhelm von Opel	2143
33	Letter from City Bank Farmers Trust Co. dated Oct. 20, 1931	2151
34	Letter to Fritz von Opel dated Jan. 5, 1935	2152

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
35	Letter to Fritz von Opel dated Dec. 27, 1934.....	2153
36	Copy of letter from Fritz von Opel dated Nov. 10, 1945	2154
37	Letter from Adler & Co. Bankers dated April 15, 1931	2157
38	Letter from Fritz von Opel dated April 27, 1931	2158
39	Letter from German Foreign Exchange Dept. dated Sept. 17, 1931.....	2159
40	Letter from Reichsbank Branch dated Oct. 22, 1931	2160
41	Telegram from Fritz von Opel dated Dec. 19, 1931	2162
43	Memorandum of Fritz and Margot von Opel	2162
45	Letter to Davis, Polk, etc. dated May 21, 1935	2211
46	Letter to Davis, Polk, etc. dated May 29, 1935	2213
47	Opel telegram dated May 29, 1935.....	2214
48	Letter to Dr. Gros dated Aug. 2, 1935.....	2214
49	Account book	2220
50	Letter from Overseas Finance Corp., Ltd. dated Nov. 27, 1935	2222

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
51	Cable from Wilhelm von Opel dated Oct. 7, 1931	2223
52	Letter from Fritz von Opel dated Oct. 20, 1931	2223
53	Cable from German Bank dated Oct. 21, 1931	2224
54	Transcript of bank account	2225
58	Smith cable dated Nov. 10, 1931	2229
59	Telegram to Mason Houghland dated Aug. 14, 1937	2229
60	Cable to Houghland dated Aug. 4, 1937	2229
61	Letter from Fritz von Opel dated Aug. 23, 1937	2230
62	Opel cable dated Aug. 28, 1937	2232
63	Houghland telegram dated July 20, 1939	2232
64	Cable from Fritz von Opel dated July 22, 1939	2232
65	Houghland telegram dated July 22, 1939	2232
66	Memorandum of Washington conference on April 29, 1935	2233
67	Frankenberg telegram dated June 14, 1936	2236
68	Affidavit of Fritz von Opel sworn to July 30, 1941	2237

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
69	Affidavit of Isidor J. Kresel sworn to Oct. 16, 1941	2242
70	Inventory of Dec. 31, 1938	2248
71	Letter to Overseas Finance Corp. Ltd. dated March 23, 1942	2258
72	Letter from Adler & Co. Bankers dated June 6, 1942	2259
73	Letter to Overseas Finance Corp. Ltd. dated Sept. 22, 1942	2259
74	Letter to Overseas Finance Corp. Ltd. dated Nov. 17, 1942	2260
75	Telegram from Dr. Rhine dated June 9, 1939	2261
76	Opel telegram dated June 9, 1939	2262
77	Letter to Fritz von Opel dated July 19, 1939	2263
78	Letter from Fritz von Opel dated July 31, 1939	2265
79	Letter to Fritz von Opel dated Sept. 8, 1939	2268
80	Letter from Fritz von Opel dated Sept. 11, 1939	2269
81	Letter to Fritz von Opel dated Sept. 16, 1939	2270
82	Opel telegram dated Sept. 16, 1939	2271
83	Letter from Bayer & Clauson dated Aug. 13, 1936	2272

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
84	Cable from Frankenberg dated June 18, 1936	2276
85	Cable to Frankenberg received June 17, 1936	2276
86	Memorandum for Dr. Frankenberg re Overseas	2277
87	Letter to Dr. Henggeler dated June 19, 1936	2278
88	Letter to Leslie, Strachan Co. dated Nov. 14, 1939	2280
89	Letter to Overseas Finance Corp. Ltd. dated Oct. 23, 1939	2281
90	Letter from Transdanubia dated Feb. 4, 1932	2282
91	Letter to Fritz von Opel dated Sept. 19, 1939	2283
92	Letter to Fritz von Opel dated Oct. 4, 1939.....	2285
93	Letter from Fritz von Opel dated Oct. 28, 1939	2286
94	Letter to Fritz von Opel dated Nov. 4, 1939.....	2287
95	Letter from Fritz von Opel dated Nov. 10, 1939	2288
96	Letter from Fritz von Opel dated April 13, 1940	2294
97	Letter to Giuliani Bros. dated March 14, 1940	2296
98	Aide memoire of Oct. 24, 1940.....	2299
105	Cable to Houghland	2301

DEFENDANT'S EXHIBITS (Continued)

NO.		PAGE
106	Letter to Fritz von Opel dated Jan. 13, 1941.....	2302
107	Letter from Fritz von Opel.....	2303
108	Excerpts from Overseas Finance Corp. Ltd.....	2303
109	Letter from Wm. Peyton Marin dated Dec. 9, 1942.....	2304
110	Telegram to Houghland.....	2306
111	Letter from Fritz von Opel dated April 14, 1936.....	2307
112	Telegram from Houghland dated Sept. 21, 1939.....	2308
113	Rules and regulations of German Control Office.....	2309
114	Executive Order of Reichspresident.....	2313
116	Letter from Dr. Frankenberg dated Aug. 12, 1937.....	2319
117	Letter to Swiss Federal Banking Commission dated June 2, 1937.....	2323

	PAGE
Proceedings in U.S.C.A. for the District of Columbia Circuit	2325
Minute entry of argument and submission (omitted in printing)	2325
Opinion, Prettyman, J.	2326
Judgment	2328
Motion for clarification, rehearing or modification of judgment	2329
Memorandum opinion on motion, Prettyman, J.	2333
Order granting motion for clarification of the opinion	2335
Order denying motion for rehearing and for modification of judgment	2336
Order extending time to file petition for writ of certiorari	2337
Stipulation as to printed record (omitted in printing)	2337
Order allowing certiorari	2339

Docket Entries

<i>Date</i>	<i>Proceedings</i>
Oct. 25, 1944	Complaint.
Aug. 26, 1945	Amendment to complaint.
Feb. 6, 1948	Answer to complaint as amended.
Dec. 8, 1948	Trial begins, through Dec. 9-10; to Dec. 13th, 14th, 15th, 16th, 17th, respited to Dec. 20th, 21st, 22nd, 23rd and respited to January 3, 1949 to 4th, 5th, 6th, 7th, respited to Jan. 10th to 11th, end of trial.
Feb. 21, 1949	Opinion of the court. Laws, C. J.
May 6, 1949	Findings of fact and conclusions of law. Laws, C. J. (N).
May 6, 1949	Judgment for defendant. For costs. Laws, C. J. (N).
May 5, 1949	Motion by plaintiff for new trial on newly discovered evidence.
June 21, 1949	Ordered that plaintiff's motion for new trial is denied. Laws, C. J.
Aug. 12, 1949	Notice of appeal by plaintiff from the judgment entered May 5, 1949 and from the order denying plaintiff's motion for new trial entered as of January 21, 1949.

3270 In the United States District Court for the District
of Columbia

Civil Action No. 26453

UEBERSEE FINANZ-KORPORATION; A. G. LIESTAL,
SWITZERLAND,

Plaintiff.

—v.—

JAMES K. MARKHAM, AS ALIEN PROPERTY CUSTODIAN,

Defendant.

Complaint

Filed Oct. 25, 1944

Plaintiff by its attorneys, complaining of the defendant,
alleges:

1. This action arises under the Fifth Amendment to the Constitution of the United States and the Trading With The Enemy Act, Act of October 6, 1917, 40 Stat. 411, as amended; U. S. C. Title 50, Appendix Sections 1 to 31, inclusive, as hereinafter more fully appears.

2. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.

3. Plaintiff is a corporation organized in the year 1922 under the laws of the Confederation of Switzerland, has its principal office at Liestal, Switzerland, and is and always has been a citizen of Switzerland.

4. Plaintiff is not, nor at any of the times herein specified has been, an enemy or ally of enemy of the United

States within the meaning of the Trading With The Enemy Act.

5. Plaintiff is not, nor at any of the times herein specified has been, a national of a designated enemy country.

6. On and prior to June 4, 1942, and continuously thereafter, plaintiff was and is the lawful owner of the following property:

(a) 345,760 shares of the common stock of Harvard Brewing Company (a Delaware Corporation), and all dividends thereon since June 14th, 1942. (Described in Custodian's Vesting Order No. 17, dated June 14, 1942.)

(b) 73,039 shares of the common stock of Spar Distributing Company, Inc. (a Delaware Corporation), and all dividends thereon since June 14, 1942. (Described in Custodian's Vesting Order No. 14, dated June 14, 1942.)

(c) 100 shares of the common stock of Westminster Industrial Corporation (a New York Corporation), and all dividends paid thereon since June 14, 1942. (Described in Custodian's Vesting Order No. 18, dated June 4, 1942.)

3271 (d) 7,304 shares of the common stock of Ajax Transportation Company (a Missouri corporation), and all dividends thereon since June 30, 1942. (Described in Custodian's Vesting Order No. 36, dated June 30, 1942.)

(e) All right, title and interest of Uebersee Finanz-Korporation, A. G., (Overseas Finance Corporation, Limited), in and to that certain contract executed under the date of October 18, 1940 with Amerlagente, Inc., a Delaware corporation.

All income, profits and other property heretofore accrued or which may hereafter accrue to Uebersee Finanz-Kor-

poration, A. G. (Overseas Finance Corporation, Limited), by virtue of the aforesaid contract dated October 18, 1940. (Described in Custodian's Vesting Order No. 51, dated July 11, 1942.)

(f) 300 shares of the common stock of Amerlagene, Inc. (a Delaware corporation), and all dividends thereon since June 4, 1942. (Described in Custodian's Vesting Order No. 19, dated June 4, 1942.)

7. On the following dates Leo T. Crowley, the predecessor in office of the defendant, caused to be executed the following numbered Vesting Orders respecting the property described in the indicated sub-sections of Paragraph 6, above:

Date	Vesting order No.	Description
6-14-42	17	See Paragraph 6 (a).
6-14-42	14	See Paragraph 6 (b).
6-4-42	18	See Paragraph 6 (c).
6-30-42	36	See Paragraph 6 (d).
7-11-42	51	See Paragraph 6 (e).
6-4-42	19	See Paragraph 6 (f).

8. Thereafter, in purported pursuance of said Vesting Orders the said Leo T. Crowley, without warrant of law and in violation of the Constitution of the United States, seized the property described in Paragraph 6 above, without the consent of the plaintiff.

9. At no time, at or since the dates mentioned in Paragraphs 7 and 8 above, has any of the property described in Paragraph 6 above, been owned, directly or indirectly, in whole or in part, by any person who was or is an enemy or ally of enemy within the meaning of the Trading With The Enemy Act.

10. At no time, at or since the date, mentioned in Paragraphs 7 and 8 above, has any of the property described in Paragraph 6 above, been owned, directly or indirectly, in whole or in part, by any person who was or is a national of a designated enemy country.

11. On May 27, 1943 plaintiff duly made and filed in triplicate with the defendant, a Notice of Claim with respect to the property described in Paragraph 6 above, in the form and containing the particulars required by the Alien Property Custodian.

3272 12. Defendant and his predecessor have retained and defendant is now retaining the property described in Paragraph 6 hereof, without warrant of law and in violation of the Constitution of the United States.

Wherefore plaintiff demands:.

(a) Judgment that it is entitled to the immediate possession of the property described in Paragraph 6 hereof.

(b) That a decree be entered directing the defendant to account for and deliver and transfer to plaintiff the property described in Paragraph 6 hereof, together with all dividends and avails thereof and all right, title and interest therein.

(c) Judgment for the costs of this action.

UEBERSSEE FINANZ-KORPORATION, *Plaintiff*.

By RICHARD J. CONNOR,

BART W. BUTLER,

Attorneys for Plaintiff,

821 15th Street NW., Washington 5, D. C.

• • • • •

Amendment to Complaint Filed August 20, 1945

In United States District Court

Amendment to complaint

Filed Aug. 20, 1945

The Complaint in the above-entitled matter is hereby amended in the following particulars:

By amending Paragraph 7 to read as follows:

7. On the following dates Leo T. Crowley, the predecessor in office of the defendant, caused to be executed the following numbered Vesting Orders respecting the property described in the indicated sub-sections of Paragraph 6, above:

Date	Vesting order No.	Description
6-14-42	17	See Paragraph 6 (a).
6-14-42	14	See Paragraph 6 (b).
6-4-42	18	See Paragraph 6 (c).
6-30-42	36	See Paragraph 6 (d).
7-11-42	51	See Paragraph 6 (e).
6-4-42	19	See Paragraph 6 (f).

and on August 6, 1942, issued an amendment of Vesting Order No. 17 and on July 11, 1944, the defendant issued an amendatory and supplemental order to Vesting Order No. 14.

By amending Paragraph 9 to read as follows:

9. At no time, at or since the dates mentioned in Paragraphs 6, 7 and 8 above, has any of the property described in Paragraph 6 above, been owned or controlled, directly or indirectly, in whole or in part, by any person who was or is an enemy or ally of enemy within the meaning of the Trading with the Enemy Act.

By amending Paragraph 10 to read as follows:

10. At no time, at or since the dates mentioned in Paragraph 6, 7, and 8 above, has any of the property described in Paragraph 6 above, been owned or controlled, directly or indirectly, in whole or in part, by any person who was or is a national of a designated enemy country.

By adding a paragraph numbered 10 (a) reading as follows:

10 (a). At no time, at or since the dates mentioned in Paragraphs 6, 7 and 8 above, has any of the property described in Paragraph 6 above, directly or indirectly, in whole or in part, been owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of:

(i) An enemy or ally of enemy within the meaning of the Trading with the Enemy Act.

(ii) A designated enemy country within the meaning of the Trading with the Enemy Act or any executive orders issued pursuant thereto.

(iii) Any national of a designated enemy country within the meaning of the Trading with the Enemy Act or any executive orders issued pursuant thereto.

By adding a paragraph numbered 10 (b) reading as follows:

10 (b). At no time, at or since the dates mentioned in Paragraphs 6, 7 and 8 above, have any of the corporations whose names are stated in Paragraph 6 above been an enemy or ally of enemy within the meaning of the Trading with the Enemy Act or a national of a designated enemy country within the meaning of the Trading with the Enemy Act or any of the executive orders issued pursuant thereto.

By adding to the prayer for relief in said Complaint a subparagraph (d) reading as follows:

(d) Such other or further relief as is warranted in the premises.

Answer to Complaint as Amended
Filed February 6, 1948

3286 Defendant Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, for his answer to the complaint as amended:

1. Admits that this action purports to be brought under the Trading with the Enemy Act, as amended, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 1 of the complaint.

2. Admits the allegations contained in Paragraph 2 of the complaint.

3. Admits that plaintiff is a corporation organized under the laws of the Confederation of Switzerland, and except as thus expressly admitted, alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the complaint.

4. Denies each and every allegation contained in Paragraph 4 of the complaint.

5. Denies each and every allegation contained in Paragraph 5 of the complaint.

6. Admits that immediately prior to the respective dates of vesting thereof the property described in Paragraph 6 of the complaint was held or registered in the name of the plaintiff or its nominees, agents, or trustees, and that plaintiff was a party to the contract described

in subparagraph 6(e) of the complaint, but denies^o
 3287 that plaintiff was the real, beneficial owner of such
 property, and except as thus expressly admitted,
 denies each and every allegation contained in Paragraph 6
 of the complaint.

7. Admits the allegations contained in Paragraph 7 of
 the complaint, except that defendant alleges that Vesting
 Order Nos. 14 and 17 were executed on June 4, 1942 and
 that Vesting Order No. 51 was executed on July 10, 1942.

8. Admits that Leo T. Crowley vested the property de-
 scribed in Paragraph 6 of the complaint under the author-
 ity of the Trading with the Enemy Act, as amended, and
 without the consent of the plaintiff, and except as thus ex-
 pressly admitted, denies each and every allegation con-
 tained in Paragraph 8 of the complaint.

9. Alleges that on and after the respective dates of
 vesting title to the property described in Paragraph 6 of
 the complaint has been vested in the Alien Property Cust-
 odian and in the Attorney General, as successor to the
 Alien Property Custodian, on behalf of the United States
 of America, and otherwise denies each and every allega-
 tion contained in Paragraph 9 of the complaint.

10. Alleges that on and after the respective dates of
 vesting title to the property described in Paragraph 6 of
 the complaint has been vested in the Alien Property Cust-
 odian and in the Attorney General, as successor to the
 Alien Property Custodian, on behalf of the United States
 of America, and otherwise denies each and every allega-
 tion contained in Paragraph 10 of the complaint.

11. Alleges that on and after the respective dates of
 vesting title to the property described in Paragraph 6 of
 the complaint has been vested in the Alien Property Cust-

todian and in the Attorney General, as successor to the Alien Property Custodian, on behalf of the United States of America, and otherwise denies each and every allegation contained in Paragraph 10(a) of the complaint.

12. Alleges that the Alien Property Custodian 3288 vested certain shares of stock of the corporations referred to in Paragraph 6 of the complaint, as more particularly described in the vesting orders referred to in Paragraph 7 of the complaint, and otherwise denies each and every allegation contained in Paragraph 10(b) of the complaint.

13. Admits that on May 27, 1943 plaintiff filed a notice of claim with the Alien Property Custodian with respect to the property described in Paragraph 6 of the complaint, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 11 of the complaint.

14. Admits that defendant and his predecessors have retained and that defendant is now retaining the property described in Paragraph 6 of the complaint, and except as thus expressly admitted, denies each and every allegation contained in Paragraph 12 of the complaint.

WHEREFORE the defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

DAVID L. BAZELON
David L. Bazelon
Assistant Attorney General

THOMAS E. HARRIS
Thomas E. Harris
Special Assistant to the
Attorney General.

**Pretrial Proceedings and Defendant's Attached Memo
Filed October 25, 1948**

3316 STATEMENT OF NATURE OF CASE:

Action under Section 9 of the Trading with the Enemy Act to recover certain property originally belonging to plaintiff and which was seized by the Alien Property Custodian.

The Supreme Court has held that the plaintiff may maintain this action under Section 2, 332 U. S. 480 (1947). The plaintiff is a corporation organized and existing under the laws of Switzerland.

Defendant contends that the stock of the corporation is held or that the corporation is controlled by enemy aliens. Defendant admits that the property referred to in the complaint was seized by the Alien Property Custodian and at the time of the seizure it was the property of the plaintiff.

The only issue of fact in the case is whether the stock of the plaintiff is owned by or the plaintiff is otherwise controlled by enemy aliens.

Defendant further claims and presents an additional issue that the plaintiff corporation was doing business in a country with which the United States was at war and is therefore itself an enemy.

Defendant claims that plaintiff corporation was doing business in an enemy country i.e. Hungary from the middle 1930s to 1942.

Specifically defendant claims that plaintiff operated mines in Hungary either directly or through others.

It is stipulated that the defendant will furnish plaintiff's counsel with those portions of the hearing before the Alien Enemy Hearing Board which relates to the operation of the mines.

Defendant's contentions are set forth in greater detail in the attached memorandum which is made a part of this memorandum.

3317 It is stipulated that Exhibit 17, attached to defendant's notice to admit, a folder consisting of five pages, is a photostat of a document in the files of the City Bank Farmers Trust Company.

That the document heretofore identified as Exhibit 17, a folder consisting of five pages, was kept by the City Bank Farmers Trust Company in the regular course of business and that it was the regular course of business of the City Bank Farmers Trust Company to keep such document.

That pages 2 and 5 of such document were signed by Fritz von Opel.

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

The plaintiff stipulates that the translations furnished by the defendant of exhibits that were identified at the taking of depositions is an accurate translation.

Defendant admits that the plaintiff is a Swiss corporation.

It is stipulated that each party may call two expert witnesses as to German law and one witness as to Swiss law.

It is stipulated that in November 1939 Fritz Von Opel became a citizen of the principality of Lichtenstein. Defendant contends however that under German law he did not thereby lose German citizenship.

It is stipulated that photostats may be produced in evidence at the trial in lieu of original documents subject to correction.

It is stipulated that the agreement bearing date of Oct. 5, 1931 was signed by the parties whose signatures it purports to bear. The agreement is being marked. It is further stipulated that document was executed sometime prior to Jan. 1, 1932. It is further stipulated that a photostatic copy may be substituted for the original.

Dated Oct. 22, 1948

A. HOLTZOFF,
Pretrial Justice.

REMARKS of Pretrial Justice for consideration of Trial
Justice:

Attorneys authorized to act:

RICHARD CONNOR
Attorney for Plaintiff.

THOMAS HARRIS
Attorney for Defendant.

• • • • •

Defendant's Contentions

3318 I. Under Section 2 of the Trading with the Enemy Act and the decision of the Supreme Court in *Uebersee v. Clark*, 332 U. S. 480 (1947) plaintiff corporation is enemy tainted and may therefore not recover, if it is owned or controlled by enemies. It is undisputed that all of the stock of plaintiff corporation was acquired by Fritz von Opel solely with the proceeds of an alleged gift agreement of October 5, 1931 between Wilhelm and Marta von Opel and Fritz von Opel. Defendant contends that the plaintiff's enemy taint exists by reason of any one of the following grounds:

1. The alleged gift agreement of October 5, 1931 was sham and fictitious, and did not operate to pass title from Wilhelm and Marta von Opel to Fritz von Opel. The stock of plaintiff, therefore, was at the time of vesting, owned by Wilhelm and Marta von Opel, residents and nationals of Germany, and enemies under the Act.

2. The usufruct provided for in the alleged gift agreement of October 5, 1931 was never validly created under German law; said usufruct was an essential part of the agreement; since the usufruct was invalid, the entire agreement was invalid, and therefore did not pass title from Wilhelm and Marta von Opel to Fritz von Opel. The stock of plaintiff, therefore, was at the time of vesting owned by Wilhelm and Marta von Opel, residents and nationals of Germany, and enemies under the Act.

3319 3. If the entire gift agreement of October 5, 1931 be considered valid, the stock of plaintiff was, by reason of the usufruct provision, owned or controlled by, or was held on behalf of Wilhelm and Marta von

Opel, residents and nationals of Germany, and enemies under the Act.

4. Even if it be assumed that Fritz von Opel was plaintiff's sole stockholder, as plaintiff alleges, Fritz von Opel was an agent of the German government or was acting on behalf of that government while the United States was at war with Germany, and is, therefore, an enemy under Section 2 of the Trading with the Enemy Act. Consequently, plaintiff is owned or controlled by an enemy under the Act.

5. If it be assumed that the stock of plaintiff is owned by Fritz von Opel, as plaintiff alleges, Fritz von Opel is a national of Germany and plaintiff is owned or controlled by a national of Germany and may not recover under the provisions of Sections 2 and 39 of the Trading with the Enemy Act.

II. Plaintiff was doing business in a country with which the United States was at war and is therefore itself an enemy under the provisions of Section 2 of the Trading with the Enemy Act and may not recover.

Plaintiff's Interrogatories, Served October 27, 1948

3339 To: DAVID L. BAZELON

THOMAS E. HARRIS

MYRON C. BAUM

JOSEPH LAUFER

Attorneys for Defendant

Department of Justice

Washington 5, D. C.

Interrogatories on behalf of plaintiff to be answered by the defendant:

1. State what the defendant means by the word "sham" as used in sub-paragraph 1 of the memorandum "Defendant's Contentions".
2. State what the defendant means by the word "fictitious" as used in sub-paragraph 1 of the memorandum "Defendant's Contentions".
3. State the provision of German law upon which the defendant relies in sub-paragraph 2 of the memorandum "Defendant's Contentions", which states "The usufruct provided for in the alleged gift agreement of October 5, 1931, was never validly created under German law".
4. State the provision of German law on usufruct upon which the defendant relies in its contention in sub-paragraph 3 of the memorandum "Defendant's Contentions" that the stock of plaintiff was, by reason of the usufruct provision, owned or controlled by, or was held on behalf of Wilhelm and Marta von Opel, residents and nationals of Germany, and enemies under the Act.

5. State the nature of Fritz von Opel's agency for the German Government and in what respect he acted for that Government as set forth in sub-paragraph 4 of the memorandum "Defendant's Contentions".
6. State the evidence, documentary or otherwise, upon which the defendant relies for the statement in sub-paragraph 4 of the memorandum "Defendant's Contentions" that "Fritz von Opel was an agent of the German Government or was acting on behalf of that Government while the United States was at war with Germany, and is, therefore, an enemy under Section 2 of the Trading with the Enemy Act".
- 3340 7. State the evidence, documentary or otherwise, upon which the defendant relies for the statement in sub-paragraph 5 of the memorandum "Defendant's Contentions" that "Fritz von Opel is a national of Germany".
8. State the names and addresses of the witnesses, if any, and the substance of their testimony, upon which the defendant intends to rely for any and/or all of defendant's contentions.
9. As to "II" of the "Defendant's Contentions" it is the understanding of the plaintiff that should the defendant endeavor to prove that "the plaintiff was doing business in a country with which the United States was at war" that the defendant, pursuant to the order of the court at pre-trial, will supply to the plaintiff that evidence upon which the defendant relies.

DATED, October 27, 1948.

RICHARD J. CONNOR
WALTER E. GALLAGHER
Attorneys for Plaintiff

Plaintiff's Interrogatory, Served October 22, 1948

3341 To: DAVID L. BAZELON
THOMAS E. HARRIS

MYRON C. BAUM

JOSEPH LAUFER

Attorneys for Defendant

Department of Justice

Washington 5, D. C.

Interrogatory on behalf of plaintiff to be answered by the defendant:

1. State whether or not the defendant has in its possession any documents, papers, books, memoranda and/or letters from the files of the General Motors Corporation, or from the files of any of its officers or employees, which in any way pertain to the purchase of Adam Opel, A.G. by the General Motors Corporation, other than documents, papers, books, memoranda and/or letters, copies of which have heretofore been delivered to the plaintiff by the defendant.

DATED, October 28, 1948.

RICHARD J. CONNOR

WALTER E. GALLAGHER

Attorneys for Plaintiff

Defendant's Answer to Plaintiff's Interrogatories
Filed November 12, 1948

3353 Defendant makes the following answers to plaintiff's interrogatories dated October 27, 1948:

1. In using the word "sham" in Paragraph 1 of the document entitled "Defendant's Contentions", defendant ascribes to that word the meaning given to it in Webster's New International Dictionary, Second Edition (1948) viz.: "false; counterfeit; pretended; feigned" and in Black's Law Dictionary, Third Edition (1933) viz.: "false".

2. In using the word "fictitious" in Paragraph 1 of the document entitled "Defendant's Contentions", defendant ascribes to that word the meaning given to it in Webster's New International Dictionary, Second Edition (1948) viz.: "feigned; imaginary; pretended; not real; counterfeit; not genuine" and in Black's Law Dictionary, Third Edition (1933) viz.: "false, feigned or pretended; imaginary; not real; counterfeit. Arbitrarily invented and set up, to accomplish an ulterior object."

3. The provisions of German Law referred to in Subparagraph 2 of the document entitled "Defendant's Contentions" are those provisions included in the German Civil Code, Book 3, Chapter 5, Title 2 (Usufruct.)

4. The provisions of German law which defendant deems applicable to the contentions stated in Subparagraph 3 of the document entitled "Defendant's Contention" are the provisions included in the German Civil Code, Book 3, Chapter 5, Title 2 (Usufruct).

5 and 6. Defendant withdraws the contention advanced in Subparagraph 4 of the document entitled "Defendant's Contentions".

3354 - 7. The evidence upon which defendant relies for the statements contained in Subparagraph 5 of the document entitled "Defendant's Contentions" is as follows:

(a) The Law on German Nationality of July 22, 1913, Section 25.

(b) The lack of any evidence that Fritz von Opel did not make application to the competent German authorities for permission to retain his German citizenship when he purchased Liechtenstein citizenship.

(c) The fact that the Swiss Government has continued to consider Fritz von Opel a citizen of Germany and has refused to recognize any alleged loss of German citizenship.

(d) Evidence to be obtained through cross-examination of Fritz von Opel and Daniel Gros.

8. The names and addresses of the witnesses whom defendant now intends to call are as follows:

(a) Mr. Joseph Laufer, Attorney, Department of Justice, Washington, D. C.

(b) Dr. Magdalena M. Schoch, Attorney, Department of Justice, Washington, D. C.

(c) Mr. Harry Kiefer, United States Court House, Foley Square, New York, N. Y.

(d) Mr. B. P. Crittendon, RFD. #1, Southbury, Connecticut.

(e) Mr. Rudolf Deku, Aachen, Germany.

(f) Mr. Hans Joachim Caesar, Duesseldorf, Germany.

(g) Mr. J. Mason Houghland, Spur Distributing Company, Nashville, Tennessee.

(h) Mr. Calvin Houghland, c/o J. Mason Houghland, Spur Distributing Company, Nashville, Tennessee.

(i) Mr. James D. Mooney, Willys Overland Motors, Toledo, Ohio (by deposition).

(j) Mr. Wilhelm Jelkmann, Frankfurt, Germany (by deposition).

(k) Mr. Carl Klar, Kroppach, Germany (by deposition).

(l) Mr. Karl Friedrich Wilhelm, Berlin, Germany, (by deposition).

3355 9. Defendant cannot state what plaintiff's understanding is as to what evidence defendant would supply to the plaintiff on the issue of whether plaintiff was doing business in a country with which the United States was at war. The Court, however, at the pre-trial hearing directed the defendant to furnish "plaintiff's counsel with those portions of the hearing before the Alien Enemy Hearing Board which relates to the operation of the mines." Defendant complied on October 29, 1948.

Defendant makes the following answer to plaintiff's interrogatory dated October 28, 1948:

1. Defendant does not have in his possession any documents, papers, books, memoranda and/or letters from the files of the General Motors Corporation, or from the files of any of its officers or employees, which in any way pertain to the purchase of Adam Opel, A. G. by the General Motors Corporation, other than documents, papers, books,

memoranda and/or letters, copies of which have heretofore been delivered to the plaintiff by the defendant.

DATED: November 10, 1948

/s/ JOHN L. BURLING

John L. Burling
Chief Trial Attorney
Attorney for Defendant

Sworn to before me this
10th day of November, 1948

Gladys E. McGaffey
Notary Public, D. C.

(SEAL)

**Defendant's Supplemental Answer to Interrogatories
Filed November 18, 1948**

3356 Defendant further states in reply to Interrogatory No. 7 of the interrogatories served by plaintiff upon defendant on October 27, 1948:

(e) A letter to Dr. Daniel Gros from Mrs. Fritz von Opel dated May 6, 1946 in which is included a purported quotation from a letter from the Swiss Government made in connection with an application filed on behalf of Fritz von Opel, which says in part as follows:

"We beg to remind you, however, that according to section 25 of the German citizenship act of July 22, 1913, loss of the German nationality not only depends on the acquisition of a foreign nationality but also on the prerequisite that the person in question does not have his domicile nor his permanent residence in Germany, and that he has not upon his application, received the written consent of the competent authorities to keep his German nationality before acquiring the foreign nationality."

(f) A letter from Dr. Daniel Gros to a Dr. Schaecker, of the firm of Adam Opel, A. G., dated May 8, 1946, in which Dr. Gros requests Dr. Schaecker to obtain a certificate relating to the nationality of Fritz von Opel.

3357 (g) A document executed by the Office of the County Chairman (Landratsamt), Gross-Gerau, referring to an application filed by Dr. Daniel Gros, attorney at law, Wiesbaden-Dotzheim, seeking a certificate reciting that Fritz von Opel had not filed

an application pursuant to Section 25, Article 2 of the German citizenship law to retain German citizenship and stating that such certificate could not be supplied because all files on naturalization and denaturalization had been lost as a result of the war and that any investigation of the case was impossible.

Dated: Washington, D. C.
November 16, 1948

/s/ JOHN L. BURLING

John L. Burling
Chief Trial Attorney
Attorney for Defendant

Subscribed and sworn to before
me this 16th day of November,
1948.

GLADYS E. MCGAFFEY
My Commission Expires 9/30/53

(Seal)

Defendant's Interrogatories to Plaintiff
Filed November 18, 1948

3358 To: WALTER E. GALLAGHER
GALLAGHER, OSHERMAN, CONNOR & BUTLER
821 15th Street, N. W.
Washington, D. C.
Attorneys for Plaintiff

Interrogatories on behalf of defendant to be answered by plaintiff:

1. Was the usufruct provided for in the alleged gift agreement of October 5, 1931 between Wilhelm and Marta von Opel and Fritz von Opel ever validly created?
2. If the above-mentioned usufruct was validly created, when was it so created?
3. If the above-mentioned usufruct was validly created, state the manner in which it was created and under what provisions of German law it was created.
4. If the above-mentioned usufruct was not validly created, state the circumstances and the provisions of German law which rendered it invalid.
5. Is the above-mentioned usufruct still in existence?
6. If the above-mentioned usufruct is not in existence, state when it ceased to exist and in what manner its existence was terminated.
7. State the names of the stockholders of plaintiff corporation from October 5, 1931 to June 1942, showing

the period of time during which each person was a stockholder.

8. State the names of the beneficial owners of the stock of plaintiff corporation from October 5, 1931 to June 1942, showing the period of time during which each person beneficially owned the stock.
9. State the names of all persons having ultimate beneficial ownership of the assets of the plaintiff corporation from October 5, 1931 to June 1942, the nature of the interest and the period of time during which it existed.
- 3359 10. Describe in detail the business organization existing under the laws of the principality of Liechtenstein known as Frima Verwaltungsanstalt.
11. When was Frima Verwaltungsanstalt organized and for what purpose?
12. State for each year from 1933 to 1948 what assets Frima Verwaltungsanstalt has held.
13. Name the beneficial owner or owners of Frima Verwaltungsanstalt from 1933 to June 1942.
14. State when, from whom and for what price Frima Verwaltungsanstalt acquired 97 shares of plaintiff corporation.
15. State whether Frima Verwaltungsanstalt ever entered into a transaction whereby it sold or purported to sell 97 shares of the stock of plaintiff corporation to a national or nationals of Switzerland.

16. If the answer to question No. 15 is in the affirmative, state when the sale or purported sale took place; name the purchaser or purchasers of the shares; state at what price the shares were sold by Frima Verwaltungsanstalt; and state in what manner the purchase price was paid to Frima Verwaltungsanstalt.
17. State in detail what was done with respect to the certificates of the 97 shares of plaintiff corporation transferred from Frima Verwaltungsanstalt to the purchasers referred to in question No. 16 above from the time of the sale until the shares were reacquired by Frima Verwaltungsanstalt.
18. State in detail the terms of any agreement or agreements, including secret or oral agreements entered into between Frima Verwaltungsanstalt and the Union Bank of Switzerland relating to the aforesaid sale of 97 shares of plaintiff corporation.
19. State in detail the terms of any agreement or agreements, including secret or oral agreements entered into between Frima Verwaltungsanstalt and the aforesaid purchasers of 97 shares of plaintiff corporation.
20. State whether Frima Verwaltungsanstalt was required to deposit any cash and/or securities with the Union Bank of Switzerland in connection with the aforesaid sale of 97 shares of the stock of plaintiff corporation and, if so, describe the transaction in detail.
21. As of October 30, 1941, what was the approximate value of the assets of Frima Verwaltungsanstalt and of plaintiff corporation?

22. As of June 1, 1936 and as of October 30, 1941, what was the book value per share of plaintiff corporation?

3360 23. Did Prima Verwaltungsanstalt ever reacquire the 97 shares of plaintiff corporation which it had previously sold as aforesaid? If so, state from whom it reacquired the shares; state the price per share which Prima Verwaltungsanstalt paid; state with what funds Prima Verwaltungsanstalt made the purchase; and give the date of the transfer.

24. State the names of the directors of plaintiff corporation from October 5, 1931 to June 1942 showing the period of time during which each such person was a director.

25. State the names of the persons who voted the stock, or in whose behalf the stock of plaintiff was voted, at each stockholders' meeting of plaintiff corporation from October 5, 1931 to June 1942.

26. State the names and addresses of the witnesses whom plaintiff intends to call on its behalf upon the trial of this action and state whether the testimony of such witnesses will be by deposition or in person.

27. Describe the nature of plaintiff's interest in bauxite mines in Hungary at all times from October 5, 1931 to June 1942.

28. State the nature of plaintiff's interest in any corporation holding or owning bauxite mines in Hungary or bauxite mining rights in Hungary at all times from October 5, 1931 to June 1942.

29. Describe in detail all actions taken by plaintiff, or by any agent of plaintiff including Fritz von Opel, con-

cerning the mining of bauxite in Hungary at all times from October 5, 1931 to June 1942.

30. Are the documents described immediately below in subparagraphs (a) and (b) in plaintiff's custody or control and, if so, where are they at the present time:

(a) Copy of the certificate obtained in September or October 1939 by plaintiff from the Schweizerische Bankgesellschaft (Union Bank of Switzerland) concerning the ownership of the Uebersee shares and submitted, on or before October 23, 1939, to the Alien Property Custodian of the Tanganyika Territory, Dar-es-Salaam, by Leslie, Strachan & Co., attorneys for plaintiff, as appears from their letter dated October 23, 1939 and addressed to plaintiff. (See Uebersee records, pink folder, consecutive No. 14, marked "Kitopeni and Mpemhini, Kidagoni and Mbegani Estates, Bagamoyo, Jahres-Abschluesse.)

(b) Copy of the certificate obtained by plaintiff from the Schweizerische Bankgesellschaft on or before November 14 concerning the ownership of the Uebersee shares and submitted subsequently to the Alien Property Custodian of the Tanganyika Territory, Dar-es-Salaam by Leslie, Strachan & Co., attorneys for plaintiff, as appears from the covering letter addressed on November 14, 1939 by Dr. Hengeler on behalf of plaintiff to Leslie, Strachan & Co. (same file).

3361

Dated: Washington, D. C.
November 16, 1948

/s/ DAVID L. BAZELON

David L. Bazelon
Assistant Attorney General

**Plaintiff's Answer to Interrogatories
Served November 26, 1948**

3362 District of Columbia, ss:

Plaintiff makes the following answers to defendant's interrogatories dated November 16, 1948:

1. Plaintiff objects to interrogatory No. 1 as the same calls for an opinion on matters of law and fact.
2. Plaintiff objects to interrogatory No. 2 as the same calls for an opinion on matters of law and fact.
3. Plaintiff objects to interrogatory No. 3 as the same calls for an opinion on matters of law and fact.
4. Plaintiff objects to interrogatory No. 4 as the same calls for an opinion on matters of law and fact.
5. Plaintiff objects to interrogatory No. 5 as the same calls for an opinion on matters of law and fact.
6. Plaintiff objects to interrogatory No. 6 as the same calls for an opinion on matters of law and fact.
7. Fritz von Opel acquired 97 out of 100 shares of the Overseas Finance Corporation in the winter of 1932. Payment was made on February 2, 1932. The other three shares were in the hands of members of the Administrative Council as required by Swiss Corporation law. The members during the entire period in question were Dr. Hans Frankenburg, Dr. Eugene Meier and Dr. Joseph Henggeler, who were within the year replaced as members of the Administrative Council and shareholders by Adolf Gaeng. The remaining 97 shares were held by Fritz von Opel and transferred to the possession of Frima in 1935 or 1936. It is impossible for the plaintiff to give a more

3363

definite date at this time inasmuch as the books of Frima which reflect the correct date are, at the time of the preparation of these answers to the defendant's interrogatories, still in the possession of the defendant. On July 22, 1936 these 97 shares were delivered to the Bankgesellschaft and returned by the Bankgesellschaft into the possession of Frima on November 4, 1941. In the meantime these 97 shares were in the possession of the following clients of the Bankgesellschaft:

<i>Name</i>	<i>Shares</i>
Herrn Direktor C. Buhler, Zurich	6
Adler & Co. A. G. Banzuier, Zurich	9
Credit Industriel, Glarus	5
Herrn Direktor H. Gruebier, Zurich	9
Bank in Winterthur, Winterthur	8
Herrn Direktor M. Zimmermann, Zurich	6
Herrn Direktor F. Zehnder, Zurich	7
Herrn Direktor F. Riehner, Zollikon	4
Herrn A. Lang, Zurich	2
Herrn Direktor E. Baechi, Zurich	6
Herrn Direktor P. Jaberg, Zurich	7
Herrn Dr. H. Weiss, Zollikon	5
Herrn Dr. L. Birehler, Zollikon	4
Herrn G. A. Keller, Zurich	4
Herrn Dr. A. Schaefer, Zurich	6
Herrn Direktor Dr. E. Lang, Baden	5
Herrn Hans Keller, Ober-Engstringen	4
	—
	97

From the date of return up to date they are again in the possession of Frima.

Fritz von Opel purchased the shares in 1932 through Adler & Company as Agent for the former owners who are unknown to him.

8. The names of the beneficial owners of the stock of plaintiff corporation from October 5, 1932 to June 1942 are the same as enumerated under Section 7 above, with the exception of the three shares held by the three members of the Administrative Council, who are holding these shares on behalf of Fritz von Opel.

9. No one else but the share-holders had any beneficial interest in the assets of the plaintiff corporation between the beginning of 1932 and June 1942.

10. Frima Verwaltungsanstalt organized under the law of the principality of Liechtenstein has been and is an incorporated trust. Liechtenstein law knows this institution for many years. It is best described as "incorporated trust", such a trust on behalf of Fritz von Opel.

3364 11. Frima was founded in May 1934 by "Declaration of Foundation" by Adolf Gaeng as stipulated. The purpose for which it was organized was to give better protection to the interests of Mr. Fritz von Opel.

12. The books of Frima Verwaltungsanstalt for the period from 1933 to 1948 were submitted. They answer exactly what assets were held by Frima Verwaltungsanstalt.

13. Between the years from 1933 to June 1942, Fritz von Opel was the beneficial owner of Frima Verwaltungsanstalt.

14. Frima acquired the 97 shares of plaintiff corporation from Fritz von Opel. As mentioned above, Frima is a trust.

and keeps the 97 shares on behalf of Fritz von Opel as beneficiary. There was certainly no price paid.

15. Yes.

16. Yes. The answer to the first part of this question is shown under Section 7. The price and names of purchasers are shown below:

<i>Name</i>	<i>Shares</i>	<i>Price</i>
Herrn Direktor C. Hphler, Zurich	6	\$ 9,999.96
Adler & Co. A. C. Banzuier, Zurich	9	14,999.94
Credit Industriel, Glarus	5	8,333.30
Herrn Direktor H. Gruebler, Zurich	9	14,999.94
Bank in Winterthur, Winterthur	8	13,333.28
Herrn Direktor M. Zimmermann, Zurich	6	9,999.96
Herrn Direktor F. Zehnder, Zurich	7	11,666.62
Herrn Direktor R. Richner, Zollikon	4	6,666.64
Herrn A. Lang, Zurich	2	3,333.32
Herrn Direktor E. Baechli, Zurich	6	9,999.96
Herrn Direktor P. Jaberg, Zurich	7	11,666.62
Herrn Dr. H. Weiss, Zollikon	5	8,333.30
Herrn Dr. L. Birehler, Zollikon	4	6,666.64
Herrn G. A. Keller, Zurich	4	6,666.64
Herrn Dr. A. Schaefer, Zurich	6	9,999.96
Herrn Direktor Dr. E. Lang, Baden	5	8,333.30
Herrn Hans Keller, Ober-Engstringen	4	6,666.64
Total	97	\$161,666.02

The purchase price was paid to Frima in the regular way.

17. The certificates of the 97 shares of plaintiff corporation transferred from Frima Verwaltungsanstalt to the purchasers referred to in question 16 above from the time of the sale until the shares were reacquired by Frima Verwaltungsanstalt were handed over to the Schweizerische Bankgesellschaft on June 22, 1936. It is to be assumed that this title remained with the bank. The certificates were returned by the Schweizerische Bankgesellschaft to Adler & Company on behalf of Frima on November 4, 1941.

3365 18. The only agreement between Frima and Schweizerische (Not Union Bank of Switzerland) relating to the aforesaid sale of 97 shares of plaintiff corporation, is the contract of June 1936, in pursuance to which Frima gives to the bank 97 shares of Overseas Finance Corporation, with an order to sell these securities for account of Frima to friends of the bank. The sales contract to be made by the bank with these friends of the bank shall provide for the purchase price of \$1,666.66 per share. The bank on behalf of Frima was given the right to repurchase the shares for the same price of \$1,666.66 per share. The bank guarantees on account of Frima, annual interest of 6% to be paid to the purchasers. Frima pledged to the bank in America obligations or preferred shares with a market value of \$161,666.02.

19. There was no direct agreement between Frima and the purchasers of the 97 shares of plaintiff corporation. (Purchasers listed under Sec. 16.) The only agreement which existed between these purchasers was an agreement with the Schweizerische Bankgesellschaft containing nothing else but the purchase of the shares, the guarantee of 6% interest and the obligation to resell on request of the Bankgesellschaft.

20. This is answered by Section 18 hereof.

21. The best possible answer is reference to the books of the Frima Verwaltungsanstalt which are in the possession of the defendant at this time and the books of the plaintiff corporation.

22. Same as No. 21.

23. Yes. The shares were reacquired on the basis of the repurchase agreement described above. In regard to the funds used for the payment of the repurchase price, reference is made to No. 18 above. The transfer took place on November 4, 1941.

24. During the winter of 1932 until this date Dr. Meier of Liestal and Dr. Hans Frankenburg of New York remained directors. Dr. J. Henggeler was director between 1932 and 1943, at which time his place was taken by Adolf Gaeng.

25. In the books and correspondence open to the defendant for inspection there are lists of the participants in stockholders' meetings.

26. The names and addresses of the witnesses
3366 whom plaintiff now intends to call are as follows:

Fritz von Opel, Carlton Hotel, Washington, D. C.

Wilhelm von Opel, Wiesbaden, Germany

Mrs. Wilhelmina Dern nee Uebel,

Frankfurt, Germany

Edith Esklony, Wiesbaden, Germany

Marta von Opel, Wiesbaden, Germany

Daniel Gros, Wiesbaden, Germany

} by deposition

Manfred Stansfield, 49 West 57th St. New York, N. Y.
(Either by deposition or in person)

Dr. Heinrich Kronstein, 4616 Fessenden St., N. W.,
Wash., D. C.

Dr. Otto K. Kaufmann, Yale University, New Haven,
Conn.

27. The plaintiff had no interest in bauxite mines or bauxite mining rights in Hungary at any time.

28. The plaintiff had no interest in any corporation holding or owning bauxite mines or mining rights in Hungary from October 5, 1931 to June, 1942.

29. Answered as to plaintiff in responses to interrogatories 27 and 28. However, Fritz von Opel organized the Transdanubia Bauxite A. G. having a capital of 300,000 pengoes partly paid in. This corporation owned bauxite mining rights in Hungary. No money was paid into or loaned to this corporation by Fritz von Opel or plaintiff after 1940, and to the best of Fritz von Opel's knowledge the Transdanubia Corporation ceased all mining operations in the winter of 1940-1941. Fritz von Opel has no knowledge of any operations by Transdanubia Corporation after the spring of 1941. The same is true of the plaintiff.

30. The documents described in paragraphs (a) and (b) of defendant's interrogatory No. 30 are not in the plaintiff's custody or control nor does the plaintiff know where they are at the present time.

Dated: Washington, D. C.
November 26, 1948

Plaintiff's Motion for New Trial on Newly Discovered Evidence, Filed May 5, 1949 and Affidavit of Eleonore Firnhammer Sworn to on April 27, 1949

3369 The Plaintiff moves for new trial on newly discovered evidence on the following grounds:

The newly discovered evidence will prove that on repeated occasions Wilhelm von Opel and his wife stated to the affiant, Eleonore Firnhammer their intention in having incorporated, in a deed of gift of October 5, 1931, Plaintiff's Exhibit 5, a so-called "right of usufruct"; that on other occasions, particularly in the Summer of 1937 Wilhelm von Opel advised the affiant Eleonore Firnhammer that at long last his lawyer has succeeded in bringing negotiations with the German authorities to a favorable conclusion and that he no longer had any claim against his son; that in August of 1947 he, Wilhelm von Opel, told the affiant repeatedly that he could not understand the action taken by the American authorities in this matter in view of the fact that even the Nazis had recognized the fact that he had abandoned all claims against his son. Said evidence is not cumulative nor corroborative of evidence introduced in the trial in that it is affirmative proof in contradiction of Finding 51 in this matter, wherein the Court said:

"In 1935 Wilhelm von Opel discussed the waiver of his right to a usufruct but it was never after its creation waived or abandoned by any statement or act of Wilhelm or Marta von Opel."

and would lead to a change in the outcome of the trial as follows:

Said evidence would prove by a preponderance of evidence that a waiver was in fact made by Wilhelm and Marta von Opel of any claims which they had against
3370 their son, Fritz von Opel and/or plaintiff corporation resulting from the gift agreement of October 5,

1931, and would result in a finding that Wilhelm and Marta von Opel had no interest in plaintiff corporation or any stock thereof at the time of vesting, and would, therefore, compel this court to render judgment in favor of plaintiff.

The said newly-discovered evidence will be given by Eleonore Firnhammer, as appears more fully from her affidavit sworn to on April 27th, 1949, and hereto annexed.

The said evidence was discovered subsequent to the trial of this matter in the following manner:

Mr. Fritz von Opel advised counsel for the plaintiff corporation, Mr. Walter E. Gallagher and Mr. Christopher T. Boland, that after the opinion of the Court was rendered, Eleonore Firnhammer had a conversation with Mrs. Margot von Opel, the wife of Mr. Fritz von Opel, with respect to the opinion of this Court, at which time she stated to Mrs. von Opel the facts set forth in her affidavit annexed hereto, and stated further that in the light of those facts she was unable to understand the Court's opinion.

The said evidence could not be obtained and introduced by the plaintiff at the trial with the exercise of due diligence, for the following reasons:

Mr. Fritz von Opel states that his relations with Eleonore Firnhammer have been very strained for many years. He had no knowledge that Eleonore Firnhammer knew any facts related in the attached affidavit. Neither plaintiff corporation nor its counsel were aware of the fact that Eleonore Firnhammer had any knowledge of the facts related in the affidavit and the exercise of due diligence would not have caused the plaintiff corporation or its counsel in endeavoring to ascertain all evidence which would be material in the trial of the issues in this case to have discovered this evidence in advance of the

3371 close of trial.

WALTER E. GALLAGHER

Dated:

May 5, 1949.

AFFIDAVIT

3373 STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

ELEONORE FERNBERGER, being duly sworn, deposes and says:

I was born in the year 1897 in Frankfurt on Main Germany. I am an Austrian by marriage. I was imprisoned by the Nazi Secret Police during the war for Anti-Nazi activities. Before leaving Austria I was employed by the American Occupation Army in their so-called special service. I was permitted to emigrate to this country under the provision for so-called politically persecuted people. My emigration to the United States was sponsored by my life-long friend, Mrs. Blanche Goldmark of New York City. I am now employed in New York City as a saleslady in the department store of McCreary & Company.

My mother and Wilhelm von Opel are cousins and as a child I very often came to the house of Mr. von Opel's mother, as well as his own. As Wilhelm von Opel was considerably older than I, I used to address him and his wife as uncle and aunt. As I had studied music for many years and Wilhelm von Opel was a great lover of music, I was a frequent companion of Wilhelm von Opel and his wife whenever they went to musical or theatrical event. Around 1930 when both of his children began to live abroad I saw Wilhelm and his wife very frequently and I became a close confidant of Wilhelm von Opel. After the sale of the factory around 1930 he spent much time in Berlin where I lived and which was then, before the Nazis came into power, one of the musical centers of Europe. As I took over the years more and more their daughter's place with whom they had fallen out in the early 30's, both Wilhelm and Marta von Opel, and particularly Wilhelm, frequently discussed with me their many problems, not only

family questions but also political questions connected with the seizure of power by the Nazis in 1933.

3374 At this time, 1933 or 1934, Wilhelm von Opel told me about his troubles with the Nazis and how they were looking for an excuse to persecute him, because he had always slighted them before 1933. He told me that the Nazis accused him of "economic treason" because he had sold a German factory to what they called the "Jewish General Motors." He was at that time very much upset, the reason being, as he told me, that the Nazis had threatened him to put him before the peoples' court because he had not delivered to the Nazis some part of his son's income, an income which he said he had not received and which he did not want.

About a year later, in 1934 or 1935, Wilhelm von Opel told me that this matter had been temporarily settled after payment of a very heavy fine of several million marks, but that he was afraid that the Nazis might use what he called the niessbrauch provision of the gift agreement to jump on him anew year after year. He told me that he didn't need, nor desire, any income from his son, that this provision had been merely put in to educate his newly married son to live well within his means and that this niessbrauch was now hanging over his head like the sword of Damocles. He said he could hardly sleep for fear the Nazis might persecute him again and that the best way out was to explain to the authorities what his intentions had been from the beginning, namely that he had only wanted a protection in case of need and that he did not want to have any claims against his son because they would involve him in the strict regulations in regard to foreign currency. He told me that he had taken a lawyer, Dr. Gros, to represent him in this matter and he often complained about the great difficulties encountered and the slow progress made. All through the middle 30's he was very much worried about this matter.

In summer, 1937, however, before I left for a long visit with friends in the United States, I said good-bye to Wil-

helm von Opel. At this time he was very jubilant and told me that at long last his lawyer had succeeded in bringing his negotiations with the German authorities to a favorable conclusion and that he now felt much relieved and free from the pressure which had darkened his life for so many years.

3375 After the end of the war I saw Wilhelm von Opel and his wife repeatedly, the last time in August 1947 shortly before I emigrated to the United States. At this time an investigation by some American authorities was under way and he told me repeatedly that he could not understand what it was all about. He said that even the Nazis had recognized the fact that he had abandoned all claims against his son and that he hoped that all documents from the files of the German authorities would be given to the Americans to enable them to get a complete picture of the matter.

(Signed) ELEANORE FIRNHAMMER

Subscribed and sworn to before me
this 27th day of April, 1949.

/s/ LOUIS ROSENSTEIN

(SEAL)

**Opinion of the District Court
Filed February 21, 1949**

3376 This suit was brought by plaintiff, a corporation of Switzerland, the controlling stock of which is claimed to be beneficially owned by Fritz von Opel, a citizen of Liechtenstein, to recover shares of stock of American corporations vested by the Alien Property Custodian as enemy owned property. The principal issue is whether as of the time of vesting in June and July 1942, the stock was owned or controlled by Fritz von Opel, a neutral, or by his parents, Wilhelm and Marta von Opel, citizens of Germany and "enemies" within the provisions of the Trading with the Enemy Act.¹

It is agreed that on and before October 5, 1931, Wilhelm and Marta von Opel owned 600 shares of stock of Adam Opel, A.G., a German Corporation, and that since 1929 such shares were deposited in the United States subject to an option agreement providing for their sale to General Motors Corporation for a specified sum in German reichsmarks.

Plaintiff claims that by a gift agreement executed on October 5, 1931, Wilhelm and Marta von Opel transferred their ownership in the shares of stock of Adam Opel, A.G., to their son, Fritz von Opel, and that in November, 1931, Fritz von Opel sold the stock to General Motors Corporation pursuant to the option. In the transaction he arranged to be paid in American rather than German currency. From the funds received, Fritz von Opel acquired plaintiff corporation. Later the American securities now held by defendant were purchased by plaintiff corporation. From 1932 until the time the American securities were vested pursuant to provisions of the Trading with the

¹ Title 50 App.-U. S. C. A. §§1 et seq.

Enemy Act, it is claimed Fritz von Opel owned 97 per cent of the shares of plaintiff corporation and through this ownership exercised control over the American securities. On November 21, 1939, Fritz von Opel became a citizen of Liechtenstein, which at all times during World War II was a neutral country. Any ownership or control of the American securities or any interest in them by Wilhelm or Marta von Opel as to the time the securities were vested, is denied. The agreement of October 5, 1931, indicated retention by the Opel parents of an interest in the Opel stock and any securities purchased by funds received from its sale, by way of what is known as a usufruct or "niessbranch" under German law. However, plaintiff claims such interest did not legally arise because of omission of words of assignment in the agreement and failure to deliver possession or co-possession to his parents of the property covered by the agreement. Moreover, it is plaintiff's claim that in 1935, a discussion was had by Wilhelm and Marta von Opel with their then attorney, Dr. Gros, with regard to any possible interest they might have in the property referred to in the agreement of October 5, 1931, and at that time Wilhelm and Marta von Opel orally waived such interest. Plaintiff, therefore, claims that if the Court should find any interest in the American securities existed in favor of Wilhelm or Marta von Opel previous to and at this time in 1935, it was effectively relinquished and surrendered according to the laws of Germany, by the oral waiver.

The defendant makes a number of alternative claims in opposition to the return of the vested securities. First, it maintains the agreement dated October 5, 1931, relied on by plaintiff as having divested Wilhelm and Marta von Opel of their interest in the Opel stock and properties realized from any sale of the stock, was void because it was not executed on the date it bore, but at a time in November, 1931, following sale of the Opel stock in the United States for American currency. It is contended the

plan of Wilhelm von Opel was to make it appear that Fritz von Opel, who for several years had been a non-resident of Germany, known in German as a "devisen auslander", was the owner of the stock at the time it was sold in the United States, in which event it would be permissible, under Germany's foreign exchange laws, to receive payment in American currency, instead of in German reichsmarks. If the property was owned by Wilhelm von Opel or his wife, citizens and residents of Germany, known in that country as "devisen inlanders", the sale would be subject to Germany's foreign exchange laws. Passage of more stringent laws and regulations restricting sales of German property for foreign exchange were considered imminent in Germany about this time. That

there was not believed to be sufficient time on or about October 5, 1931, to complete a satisfactory agreement transferring title to Fritz von Opel before new laws and regulations were adopted. For this reason only a preliminary draft of the gift agreement was made at or about October 5, 1931, the actual execution of the agreement having occurred in November 1931, after the sale of the Adam Opel, A. G., stock in America and Fritz von Opel's return to Germany. To make the sale of stock in America for American currency appear to have been made by Fritz von Opel, a devisen auslander, the gift agreement was predated October 5, 1931.

Defendant maintains further, that regardless of whether the agreement was executed in October or November, 1931, it was not a *bona fide* transaction, but was in all respects a sham adopted by the parents as a means of making it possible, from a sale of assets outside of Germany, to obtain gold or American securities without apparently violating the exchange laws and regulations of Germany. By reason of such a sham transaction, defendant claims the agreement was void and Wilhelm and Marta von Opel continued to have complete ownership and control of the American securities sought to be recovered by this suit.

If the Court does not accept the claim of complete ownership by Wilhelm and Marta von Opel in the vested American securities, defendant contends the evidence establishes at the least that they held a substantial part ownership in the securities. It is conceded that the gift agreement itself, if found to be valid, did not effectually create in favor of Wilhelm and Marta von Opel a usufructuary interest in the property mentioned. However, defendant asserts such an interest came into existence at a later time, when delivery was made of the controlling shares of stock of plaintiff corporation to one Hans Frankenberg, who was then acting as agent for Wilhelm and Marta von Opel. It is maintained this was an *in rem* interest, according to the laws of Germany. Defendant makes an alternative claim of limited ownership, to the effect that if the Court should find a usufructuary interest in the property did not arise in favor of Wilhelm and Marta von Opel, as last hereinbefore asserted, nevertheless Wilhelm and Marta von Opel by the agreement dated October 5, 1931, obtained a right at any time to assert a claim *in personam* against Fritz von Opel for the creation of an *in rem* interest in the property mentioned in the gift agreement.

3379 Defendant's position with respect to any type of ownership the Court may find Wilhelm and Marta von Opel held in the American securities is that the evidence establishes there was not in fact a waiver or surrender of such ownership in 1935, or at any other time, but that their ownership continued in full effect until the Alien Property Custodian vested the American securities. The defendant also maintains that under German law a waiver of ownership in the property, if made, would be void unless a license was obtained and one was not obtained.

In the event the Court does not agree with any of the foregoing defenses, defendant makes two other points

which it submits should result in judgment against plaintiff. First, that the plaintiff corporation itself is an "enemy", within the definition of Section 2 of the Trading with the Enemy Act, in that it is incorporated within a country other than the United States and during the time the United States was at war, was doing business within the territory of a nation with which the United States was at war. Second, defendant maintains that while it concedes Fritz von Opel is a naturalized citizen of a neutral country of Liechtenstein, nevertheless he still is a German national, within the meaning of Section 33 of the Trading with the Enemy Act and is not entitled to obtain return of the vested property.

The evidence presented in this case has extended to many disputed items of fact, but it develops that upon reaching findings as to a limited number of them, this suit may be decided.

I find the agreement dated October 5, 1931, between Wilhelm and Marta von Opel, as donors, and their son Fritz von Opel, as donee, was made for the primary purpose of obtaining realization in the form of gold or American securities from the sale of the 600 shares of Opel Works stock, but there was also a purpose to make financial provision for Fritz von Opel. In the transaction, Wilhelm and Marta von Opel intended to retain a usufructuary interest, according to the laws of Germany, in any property which might be obtained from funds resulting from the sale in the United States of the Opel Works stock, and it was only by inadvertence this was not accomplished by the agreement itself. However, at a time between 1932 and 1934, following the sale of the Opel Works stock in the United States and a purchase of American securities from the funds received, there was a delivery of the stock of plaintiff corporation, which had acquired the American securities, to one Hans Frankenberg, who, the evidence compels me to find was acting in the transaction as agent for Wilhelm and Marta von

Opel. According to the laws of Germany, the 3380 delivery to Frankenberg resulted in the establishment of a usufructuary interest in favor of Wilhelm and Marta von Opel in plaintiff corporation and all of its assets. In 1935, a waiver of this interest was discussed by Wilhelm von Opel with his then attorney, Dr. Gros, but I find that a waiver was not in fact made. I further find that at the time the Alien Property Custodian vested the American securities which are the subject of this suit, Wilhelm and Marta von Opel continued to hold, without impairment, their usufructuary interest in said stock of plaintiff corporation and the American securities.

A right of usufruct, once established, is under German law an *in rem* right in property. A person having a usufruct in property has a right:

- (a) to the enjoyment of the property or, in the case of money or securities, to the income from the securities;
- (b) to co-possession of the property together with the person holding legal title to the property;
- (c) to a voice in the management of the property insofar as the maintenance and preservation of the usufructuary's rights under subsection (a) above are concerned;
- (d) to prevent the sale or disposition of the property as a result of his right to co-possession;
- (e) the German Civil Code does not mention whether the usufructuary, for the protection of his income, has any voting rights. In the absence of a decided case the legal commentaries speculate in three different directions. One position is that the title owner has all voting rights and the usufructuary no voting rights whatsoever. The second position is that the title owner has a voting right for all

measures which have nothing to do with income while the usufructuary can vote in regard to income. The third position is that the usufructuary has all the voting rights.

Other rights created by the terms of the agreement dated October 5, 1931, were: (a) the right of Wilhelm and Marta von Opel to receive 80% of the income from the American securities; (b) if Fritz von Opel should predecease his parents, or one of them, without leaving legitimate issue, the complete ownership of the securities will revert to Wilhelm and Marta von Opel, or the survivor; and (c) if the parents, Wilhelm and Marta von Opel, should predecease Fritz von Opel, the gift made by the agreement dated October 5, 1931, will be considered as an advancement and be deducted from his share in such property as might be inherited by him or his sister, Mrs. Elinor Sachs, nee von Opel, or in case of her prior death, by her issue.

At all times involved in this suit, Wilhelm and Marta von Opel were citizens of Germany and "enemies", as defined by the Trading with the Enemy Act. Their 3381 daughter, Mrs. Elinor Sachs, is a native of Germany presently residing in Switzerland. In November, 1939, Fritz von Opel, formerly a German citizen, became naturalized under the laws of the principality of Liechtenstein, a neutral country during World War II.

In my opinion, the usufructuary and other interests of Wilhelm and Marta von Opel in the stock of plaintiff corporation and the securities vested by the Alien Property Custodian in June and July 1942 compel in law a decision against plaintiff's claim in this suit. By section 32(a) 2E of the Trading with the Enemy Act, an interest in property vested by the Alien Property Custodian will not be returned where the owner is a foreign corporation which at any time after December 7, 1941, was controlled, or 50 per centum or more of the stock was owned, by

any person ineligible to receive return of the vested property. The purpose of the Trading with the Enemy Act was to reach enemy interests which masqueraded under innocent fronts and where securities or other interests are found to be held by a neutral but under circumstances constituting enemy taint, return of the property after vesting by the Alien Property Custodian will be barred.² What is necessary to be proved to constitute enemy taint was left undecided by the Supreme Court. We are called upon to decide this question in the present case.

In reaching a determination of enemy taint, the Court will look not only to circumstances which indicate enemy ownership or control, but also to connections or associations with enemy interests. It seems to me the usufructuary interests of Wilhelm and Marta von Opel and the contingent interests which they, their daughter or her issue, owned in the vested securities pursuant to the provisions of the agreement of October 5, 1931, and the delivery of the stock of plaintiff to Wilhelm and Marta von Opel's agent, constitute such substantial enemy taint as to bar recovery by plaintiff. But there is further evidence of enemy taint. The circumstances surrounding the Liechtensteinean citizenship of Fritz von Opel, the sole remaining owner of interest in the vested property, are not without significance. It is conceded Fritz von Opel has technical status as a citizen of Liechtenstein, and for the purposes of this suit, it may be conceded his citizenship in that country is not open to collateral attack. But where, as in the case, the vested property is found 3382 to be owned by different parties, some of whom clearly are enemies and the sole remaining one of whom is a neutral, it seems proper in a determination of enemy taint of the property, to inquire into possible enemy tendencies of the neutral.

² *Clark v. Uebbers Finanz Korporation*, 332 U. S. 480, 485.

Fritz von Opel was born in Germany in 1899 and until 1929 lived in that country, together with his family, who were prominent industrialists known not only in Germany but in other parts of the world. Fritz von Opel achieved widespread distinction in sports in Germany and participated in its behalf in international events. While after 1929 he spent a large part of his time out of Germany, his roots remained firmly planted in that country. It was not until November of 1939, after World War II had begun, that Fritz von Opel took any steps to change his citizenship. At that time, he went through proceedings to become a naturalized citizen of the principality of Liechtenstein. He paid \$10,000 to obtain this citizenship and signed certain formal documents. However, he never has been in Liechtenstein more than a few hours at any one time; his visits have been few and in each instance of short duration; and he has never established a place of abode there. He never has taken an oath of allegiance to Liechtenstein or formally renounced citizenship in Germany. In technical form Fritz von Opel is a citizen of a neutral country, but I find beyond doubt that between 1939, when he became a naturalized citizen of Liechtenstein, and 1941, when war was declared by the United States, he had a continued interest in the welfare of and sympathy for Germany.

There is an additional circumstance in this case which of itself perhaps would not prevent recovery by plaintiff in this suit, but which with the other facts of the case tends to indicate enemy taint. The evidence shows that plaintiff at all material times in this suit owned complete stock interest in Transdanubia Bauxite, A. G., a mining corporation in Hungary. On December 13, 1941, Hungary formally became an enemy of the United States. Transdanubia Bauxite, A. G., mined bauxite, an essential ingredient in the production of aluminum. Before the war, it is clear that part of the output was shipped to Germany. There is evidence tending to show also that Transdanubia